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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,828	08/17/2001	Leon Yulkowski	YUL 0105 PUS	4536

7590

10/21/2002

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EXAMINER

VARNER, STEVE M

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 10/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,828

Applicant(s)

YULKOWSKI, LEON

Examiner

Steve M Varner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Applicant is advised that should claim 10 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7, 8, 13-15, 17, 18, are rejected under 35 U.S.C. 102(b) as being anticipated by Turpin et al.

Regarding claim 1, Turpin et al. shows a spacer (22), a first sheet of fire resistant insulating material (28), a second sheet of fire resistant insulating material (30), a first outer skin (24), and a second outer skin (26). (Fig. 1)

Regarding claim 3, 13, the gypsum-based material has a fibrous mat (32) there around. (Fig. 1)

Regarding claim 4, 14, the spacer is wood (Col. 4, Line 0-5).

Regarding claim 5, 15, there is a plurality of studs. (Fig. 1)

Regarding claim 7, 17, the first outer skin and the second outer skin form a void there between. (Fig. 1)

Regarding claim 8, 18, the void has fill material (32). (Fig. 1)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 12, 16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Turpin et al.

Regarding claim 2, 12, Turpin et al. shows the basic claimed structure. Turpin et al. does not show the first fire resistant insulating material and the second fire resistant insulating material comprises a gypsum-based material. Turpin et al. does show the first (24) and second (26) outer skin of a gypsum-based material. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use the gypsum based material of the first and second outer skin in the structure of the first and second fire resistant insulating material to provide fire protection.

Regarding claim 6, 16, Turpin et al. shows the basic claimed structure. Turpin et al. shows the plurality of studs is wood (Col. 4, Line 0-5). Turpin et al. does not show

steel studs. It would have been an obvious design choice to substitute steel for wood since these are both common structural materials.

Claims 9, 10, 19, 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Turpin et al. as applied in the rejection of claim 1 above in view of Kempel.

Regarding claim 9, 24, Turpin et al. shows the basic claimed structure. Turpin et al. does not show a top rail and a bottom rail. Kempel shows a top rail (2) and a bottom rail (40). (Fig. 2) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a top and bottom rail as in Kempel in the structure of Turpin et al. to cap the door structure.

Regarding claim 10, Turpin et al. shows the basic claimed structure. Turpin et al. does not show the first sheet of fire resistant insulating material is coupled to the first vertical edge, the second vertical edge, the top rail and the bottom rail. Kempel shows the first sheet of fire resistant insulating material (22) coupled to the first vertical edge, the second vertical edge, the top rail and the bottom rail. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use a first sheet as in Kempel in the structure of Turpin et al. to couple the fire resistant insulating material around the door.

Regarding claim 19, Turpin et al. shows the basic claimed structure. Turpin et al. does not show predetermined thickness. It would have been an obvious design choice to have a predetermined thickness.

Regarding claims 20-23, the claimed methods are the obvious methods of forming Turpin et al.'s modified gypsum board/intumescent material fire barrier wall.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tang shows a composite fire proof, heat-barrier door.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV
October 16, 2002


Carl D. Friedman
Supervisory Patent Examiner
Group 3600